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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

JAN 21 2005

FILE:

SRC 03 252 52772

Office: TEXAS SERVICE CENTER Date:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Maui Pluss

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to employ the beneficiary as a Buddhist monk. The director denied the petition, determining that the petitioner failed to establish that the beneficiary was employed for the requisite two-year period in the same position as being offered by the petitioner. The director also determined that as the beneficiary's position was a voluntary position, the petitioner was not offering the beneficiary a "permanent job offer." Finally, the director found that the petitioner failed to establish its ability to pay the beneficiary and failed to establish its tax-exempt status as a religious organization.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

8 C.F.R. § 204.5(m)(4) states that each petition for a religious worker must be accompanied by a job offer from an authorized official of the religious organization at which the alien will be employed in the United States. The official must describe the terms of payment for services or other remuneration.

The first issue to be examined is whether the petitioner has demonstrated that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation for at least the two years preceding the filing of the petition. Connected with this issue is the question of whether the beneficiary's work for the petitioner constitutes qualifying employment in a religious occupation or vocation.

8 C.F.R. § 204.5(m)(2) states, in pertinent part:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

8 C.F.R. § 204.5(m)(1) states, in pertinent part, that "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition." The petition was filed on September 18, 2003. Therefore, the petitioner must establish that the beneficiary had been continuously engaged in a qualifying religious vocation or occupation from at least September 18, 2001. The Form I-94, Arrival and Departure Record, indicates that the beneficiary entered the United States on July 4, 2002 as an R-1 nonimmigrant with authorization to remain in the United States until November 2, 2003. As such, a portion of the beneficiary's qualifying experience falls outside of his employment in the United States.

8 C.F.R. § 204.5(m) defines a "religious vocation" as "a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, *such as the taking of vows*. Examples of individuals with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters" (emphasis added).

Despite the evidence presented by the petitioner of its intent to employ the beneficiary as a Buddhist monk, the director repeatedly focuses on whether the beneficiary's position qualifies as a religious occupation. In the notice of intent to deny, issued on October 29, 2003, the director cites the regulatory definition of the term "religious occupation," and states "to establish eligibility for special immigrant classification, the petitioner must establish that the specific position qualifies as a religious occupation." In his denial, the director continues to address the beneficiary's position in terms of a "religious occupation."

As the petitioner intends to employ the beneficiary as a Buddhist monk, the director's focus on a "religious occupation," rather than a "religious vocation," was in error. Upon review of the record, however, we find the record insufficient to establish the beneficiary's ordination or his work experience as a Buddhist monk for the two-year period prior to filing the petition.

The petitioner states that the beneficiary has been "ordained into the Buddhist monkhood since 1991 in Laos." The petitioner also provides a document entitled "Ordination Document" which states:

Name of Buddhist monk:

Date of birth:

December 3, 1966

Country of birth:

Laos

Address in LAOS:

Province of Vientiane, Laos

Date of ordination to be a Buddhist monk:

March 4, 1991

Time: 2:20 P.M.

Place of Ordination:

The "Ordination Document" is written in English and appears to be a translation of the actual document evidencing the beneficiary's ordination. Upon review of the record, we are unable to locate the original document establishing the beneficiary's ordination. Though the record contains a document, presumably written in Lao, this document contains the date July 4, 1992, not March 4, 1991, the date the petitioner indicates as the date of the beneficiary's ordination.

Given the director's erroneous application of the regulations, we find the case must be remanded to the director in order to request further information regarding the beneficiary's ordination. Specifically, the director should request the petitioner to submit a copy of the beneficiary's actual ordination document with appropriate translation. In accordance with 8 C.F.R. § 103.2(b)(3), the ordination document must be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Further, though the petitioner asserts that the beneficiary has been working as a Buddhist monk since his ordination in 1991, such evidence is not corroborated by any documentary evidence in the record. Therefore, on remand, the director should also request the petitioner to submit evidence to establish the beneficiary's employment as a monk for the requisite two-year period. Specifically, as the beneficiary was not in the United States for the entire two-year period prior to filing the petition, the director should request the petitioner to submit evidence to establish that the beneficiary was working as a Buddhist monk both inside and outside of the United States, covering the period from September 18, 2001 to September 18, 2003. Uncorroborated statements by the petitioner will not suffice to satisfy the evidentiary requirement. Instead, the petitioner must submit statements and any other appropriate evidence to establish where the beneficiary was working, and for whom the beneficiary was working, during the requisite period.

Our determination that the beneficiary's position is considered a religious vocation renders the director's grounds for denial related to the petitioner's job offer, and ability to pay, moot. It is inherent in the vocation of a monk that the beneficiary will not earn any salary and will be supported by his temple.

The remaining issue is whether the petitioner is considered a qualifying tax-exempt religious organization. The

regulation at 8 C.F.R. §204.5(m)(2) defines a "bona fide nonprofit religious organization in the United States" as an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of CIS that it would be eligible if it had applied for tax-exempt status.

The regulation at 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

- (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
- (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

According to the documentation from the Internal Revenue Service, the petitioner's tax-exempt status derives from classification not under section 170(b)(1)(A)(i) of the Internal Revenue Code of 1986 (the Code), which pertains to churches, but rather under section 170(b)(1)(A)(vi) of the Code. In his decision, the director noted that "an organization granted tax-exempt status under section 170(b)(1)(a)(vi) of [the Code] need not be operated exclusively for religious purposes." The director then denied the petition, stating that the petitioner's tax exemption "may not be based on section 170(b)(1)(A)(vi)" of the Code as "8 C.F.R. § 204.5(m)(3)(i), [requires] the petitioner [to] establish that its tax exemption is based on its status as a religious organization, not just a publicly supported organization."

We find the director failed to give full consideration to the petitioner's classification under section 170(b)(1)(A)(vi). That section pertains to publicly supported organizations as described in section 170(c)(2) of the Code, "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes," or for other specified purposes. This section refers in part to religious organizations, but to many types of secular organizations as well.

The director correctly notes that an organization that qualifies for tax-exemption as a publicly supported organization under section 170(b)(1)(A)(vi) of the Code can be either religious or non-religious. However, the fact that a petitioner is granted tax-exemption based upon section 170(b)(1)(A)(vi) does not automatically render the petitioner ineligible for approval under 8 C.F.R. § 204.5(m)(3)(i).

Though the burden of proof is on the petitioner to establish its classification under section 170(b)(1)(A)(vi) of the Code derives primarily from its religious character, rather than its status as a publicly supported charitable and/or educational institution, the director did not give the petitioner the opportunity to establish such a fact. Instead, in both the notice of intent to deny and the denial the director specifically states that "tax exemption may not be based on section 170(b)(1)(A)(vi)."

Accordingly, on remand, the director should request evidence that the petitioner's classification by the Internal Revenue Service derives primarily from its religious character, rather than its status as a publicly supported charitable and/or educational institution. The necessary documentation is described in a memorandum from William R. Yates, Associate Director of Operations, *Extension of the Special Immigrant Religious Worker*

Program and Clarification of Tax Exempt Status Requirements for Religious Organizations (December 17, 2003):

- (1) A properly completed IRS Form 1023;
- (2) A properly completed Schedule A supplement, if applicable;
- (3) A copy of the organizing instrument of the organization that contains the appropriate dissolution clause required by the IRS and that specifies the purposes of the organization;
- (4) Brochures, calendars, flyers and other literature describing the religious purpose and nature of the activities of the organization.

The above list is consistent with the regulatory requirement at 8 C.F.R. § 204.5(m)(3)(i)(B), cited above. The memorandum specifically states that the above materials are, collectively, the "minimum" documentation that can establish "the religious nature and purpose of the organization." Thus, for example, a petitioner cannot meet this burden by submitting only its articles of incorporation. That being said, it is important to note that item (2), Schedule A of Form 1023, is only required "if applicable." If the director cannot show that Schedule A is applicable in a given instance, then the petitioner's failure to submit Schedule A is not grounds for denial of the petition.

Also, obviously, it is not enough merely for the petitioner to *submit* the documents listed above. The *content* of those documents must establish the religious purpose of the organization.

The director denied the petition in part because the Internal Revenue Service classified the petitioner under section 170(b)(1)(A)(vi) rather than section 170(b)(1)(A)(i) of the Internal Revenue Code. This finding relies on a flawed and impermissible interpretation of the regulations. The director must, therefore, provide the petitioner with an opportunity to submit the materials outlined in that memorandum, and thereby demonstrate that its tax-exempt status derives primarily from its religious character.

In reviewing an immigrant visa petition, Citizenship and Immigration Services (CIS) must consider the extent of the documentation furnished and the credibility of that documentation as a whole. The petitioner bears the burden of proof in an employment-based visa petition to establish that it will employ the alien in the manner stated. See *Matter of Izdebska*, 12 I&N Dec. 54 (Reg. Comm. 1966); *Matter of Semerjian*, 11 I&N Dec. 751 (Reg. Comm. 1966).

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.